



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 13

Hearing Date: January 24, 2005
Committee On: Business and Labor

Introducer(s): (Landis)
Title: Change Nebraska Workers' Compensation Court administration provisions

Roll Call Vote – Final Committee Action:

Advanced to General File
X Advanced to General File with Amendments
Indefinitely Postponed

Vote Results:

6	Yes	Senators Cunningham, Combs, Preister, Kremer, Burling and Schimek
	No	
	Present, not voting	
1	Absent	Senator Chambers

Proponents:

Senator David Landis
Glenn Morton
Michael High

Representing:

Introducer
NE Workers' Compensation Court
NE Workers' Compensation Court

Opponents:

James Michael Fitzgerald

Representing:

Self

Neutral:

Representing:

Summary of purpose and/or changes: Amendment 0761 to LB 13 replaces the original bill. It offers several administrative changes to the workers' compensation system. Additionally, it incorporates LB 219, LB 237 as amended and section from LB 435.

Explanation of amendments, if any:

Sec. 1: 48-118. (LB 219, § 1) This section clarifies that when a third person is liable to the employee or the dependents thereof for the injury or death of the employee, the employer is subrogated to the rights of the employee or his or her dependents. This section strikes language that will be obsolete.

Sec. 2: 48-121.02. (LB 13, § 1) Inserts that the administrator of the Workers' Compensation Court shall determine the average weekly wage.

Sec. 3: 48-125. (LB 237, § 1) Increases the amount that any award or judgment against the state must go before the Legislature from fifty thousand to one hundred thousand dollars and designates that the penalty for delinquent payments shall be thirty days after the effective date of the appropriation of fund to pay the award or judgment in excess of the one hundred thousand dollars.

Sec. 4: 48-144. (LB 13, § 2) Designates the administrator as the person to prescribe the form and manner of accident and settlement reports.

Sec. 5: 48-144.03. (LB 13, § 3) The administrator of the compensation court may approve electronic means for notices.

Sec. 6: 48-145.02. (LB 13, § 4) The administrator may request information from employers as to the employer's employees, location of the work, insurance company and federal identification numbers.

Sec. 7: 48-154.04. (LB 13, § 5) The administrator shall assess the costs of self-insurance.

Sec. 8: 48-155. (LB 13, § 6) The Supreme Court shall approve the selection of the presiding judge. The court shall direct and assign the work to the judges, clerk and employees who support the judicial proceedings of the compensation court.

Sec. 9: 48-157. (LB 13, § 7) Strikes present language. Inserts that the presiding judge of the Workers' Compensation Court shall appoint a clerk and employees to support the judicial proceedings of the court. The presiding judge shall also appoint an administrator, subject to the approval of the compensation court. All employees and the administrator shall serve at the pleasure of the compensation court. The administrator shall appoint employees needed to carry out the duties of the administrator and shall serve at the administrator's pleasure.

Inserts procedural language as to the assignment of work.

Sec. 10: 48-158. (LB 13, § 8) Inserts that the administrator must be bonded and take the statutory oath of office.

Sec. 11: 48-159. (LB 13, § 9) This statute concerns the salaries of the court and its staff. The change inserts the administrator into the statute. Strikes obsolete language.

Sec. 12: 48-162. (LB 13, § 10) Inserts that the workers' compensation court may require production of evidence and may expedite a hearing of a disputed case when there is an emergency; it strikes language for the establishment of a fee schedule for services and maintaining a toll-free telephone number and moves it to section 15.

Sec. 13: 48-162.02. (LB 13, § 11) Inserts that the Workers' Compensation Trust Fund shall be administered by the administrator of the workers' compensation court, and that payments from

the fund shall be made in the same manner as for claims against the state. The administrator is charged with conservation of the fund and may order payments from the fund for vocational rehabilitation services and costs. The administrator may direct the Attorney General to represent the fund in proceedings. The administrator may transfer funds when necessary.

Sec. 14: 48-163 (LB 13, § 12) Inserts that the rules and regulations relating to the compensation court's adjudicatory function shall become effective only upon approval of the Supreme Court. Removes language to coincide with other changes throughout this bill.

Sec. 15: 48-165. (LB 13, § 13) Strikes current language concerning blank forms. Inserts that the administrator may establish a schedule of fees for services and maintain a toll-free telephone number for responding to inquiries.

Sec. 16: (LB 219, § 2) New language: requires giving thirty-days notice to other potential parties prior to the filing of a claim and if a potential party cannot be located, notice shall be given to the workers' compensation court with an affidavit showing what steps were taken to locate the party. The case may be brought before the district court. Reasonable fees shall be divided between the attorneys as determined by the court, unless otherwise agreed upon.

Sec. 17: (LB 219, § 3) New language: if a party fails to join in the action, by and through their attorney, such party waives all claims; attorney fees and expenses shall be prorated under the right of subrogation and apportioned by the court.

Sec. 18: (LB 219, § 4) New language: if a third-party claim is filed without giving proper notice to the other party, attorney fees and expenses shall not be deducted from the amount payable to the other party.

Sec. 19: (LB 219, § 5) New language: a settlement of a third-party claim is void under the Nebraska Workers' Compensation Act unless: (a) there is a written settlement signed by the employee or his or her representative and the employer or the employer's insurer; or (b) in the absence of an agreement, the court may determine whether the settlement offer is fair and reasonable and order a distribution.

The court shall order a fair and equitable distribution of the proceeds of any judgment or settlement if the parties do not agree in writing to a distribution.

Sec. 20: (LB 219, § 6) New language: the Workers' Compensation Trust Fund has subrogation rights, subject to the rights of the employer and the employer's insurer.

Sec. 21: (LB 435, § 2) New language that generic drugs shall be dispensed unless a generic is not available or the physician provides in writing that a nongeneric drug must be dispensed.

Sec. 22: 48-177. (LB 219, § 7) An action in the workers' compensation court may be dismissed by the plaintiff if the plaintiff is represented by legal counsel, without prejudice.

Sec. 23: 48-1,102. (LB 237, § 2) Notice of an award or judgment in excess of one hundred thousand dollars shall be delivered by the Risk Manager to the chairperson of the Business and

Labor Committee of the Legislature at the next regular session of the Legislature convening after the date the award or judgment becomes final and nonappealable.

Sec. 24: 48-1,110. (LB 219, § 8) Adds sections 16 to 21 to the Nebraska Workers' Compensation Act; strikes the intent language that the laws shall not affect or alter any rights or privileges or obligations existing prior to July, 1986.

Sec. 25: 48-1,116 Technical changes.

Sec. 26: Sections 1, 2, 4 to 22, 24, 25, and 29 of this act become operative three calendar months after the adjournment of this legislative session.

Sec. 27: If any section in this act is declared invalid or unconstitutional, the declaration shall not affect any of the remaining portions.

Sec. 28: Original sections 48-125 and 48-1,102 are repealed.

Sec. 29: Other sections identified herein are repealed.

Sec. 30: Since an emergency exists, this act takes effect when passed and approved according to law.

Senator Douglas Cunningham, Chairperson